STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of SANDRA LEE NASSAR, A Member of the State Bar, No. 199305.	)	Case No.: 14-O-00027-YDR DECISION

Introduction[1]

In this contested disciplinary proceeding, Sandra Lee Nassar (Respondent), a Deputy District Attorney in Orange County, California, was charged with the following three counts of misconduct: (1) failing to support state law by not producing discoverable evidence to opposing counsel pursuant to Penal Code section 1054.1 et seq.; (2) suppression of evidence involving moral turpitude, dishonesty, or corruption in violation of section 6106; and (3) suppression of evidence in violation of rule 5-220. This matter centers on the issue of whether Respondent, as a prosecutor, was required to timely disclose evidence obtained through a covert mail cover.

After thorough consideration, this court finds that the State Bar has established by clear and convincing evidence that Respondent is culpable as charged. Based on the misconduct, as well as the factors in mitigation and aggravation, this court recommends, among other things, that Respondent be actually suspended from the practice of law for a minimum of one year and

[1] Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

until she provides proof to the State Bar Court of her rehabilitation, fitness to practice, and present learning and ability in the general law.

Significant Procedural History

On March 3, 2017, the Office of Chief Trial Counsel of the State Bar of California (State Bar) initiated this proceeding by filing a Notice of Disciplinary Charges (NDC). Respondent filed a response on March 20, 2017.

On June 28, 2017, the parties entered into a stipulation as to facts. A three-day trial was held on June 28-29 and July 21, 2017. The matter was submitted on July 21, 2017. The State Bar filed its closing brief on August 17, 2017, and Respondent's closing brief was filed August 18, 2017.

Senior Trial Counsel Kim Kasreliovich and Deputy Trial Counsel Hugh G. Radigan represented the State Bar. Attorney Blithe C. Leece represented Respondent.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on December 9, 1998, and has been a member of the State Bar of California at all times since that date.

Case No. 14-O-00027 – The Iacullo Prosecution

Facts

Respondent is a Deputy District Attorney for the Orange County District Attorney's Office. In June 2011, Respondent filed the original and amended criminal complaint in *People v. Carmen Iacullo and Lori Pincus*, Orange County Superior Court case No. 11NF1839 (the *Iacullo* case).

The amended *Iacullo* case felony complaint charged Carmen Iacullo (defendant Iacullo) with violating Penal Code sections 206 (Torture); 273a(a) (Child Abuse); 273d(a) (Corporal Injury on a Child); and 12022.7(a) (Enhancement for Great Bodily Injury) for acts allegedly

performed on a five year-old child. The amended felony complaint also alleged that defendant Iacullo had served several prison sentences for multiple prior felony convictions. Given his prior convictions and the gravity of the charges in the pending case, defendant Iacullo was facing a possible sentence of life in prison, if convicted.

The amended felony complaint also charged Lori Pincus (co-defendant Pincus), mother of the alleged five-year-old victim, as a co-defendant. Co-defendant Pincus was charged with felony violations of Penal Code sections 32 (Accessory After the Fact) and 273a(a) (Child Abuse). Co-defendant Pincus was in the custody of the Orange County Sheriff's Department from the date of her arrest on June 11, 2011, until she pled guilty on July 10, 2012.

In June 2011, Respondent directed that a "mail cover" be imposed with respect to nearly all of defendant Iacullo's and co-defendant Pincus's incoming and outgoing mail (the Iacullo/Pincus mail cover).[2] Pursuant to Respondent's instruction, personnel at the jail intercepted, copied, and held a copy of the intercepted mail for an investigator in the District Attorney's Office to retrieve. After the investigator retrieved the mail cover materials, he gave them to Respondent. The intercepted mail was then forwarded to the addressee.

Defendant Iacullo, co-defendant Pincus, and each of their attorneys were unaware of the mail cover. While she was assigned to the case, Respondent was the only individual who reviewed the Iacullo/Pincus mail cover materials.

Co-defendant Pincus's mail cover ended during July 2012, after she pled guilty and was released. Defendant Iacullo's mail cover remained in place until May 2013. Respondent obtained over 1,000 pages of material collected while the Iacullo/Pincus mail cover was in place. The following letters were particularly noteworthy: (1) an October 23, 2011 letter from co-defendant Pincus to defendant Iacullo which in pertinent part stated, "I know you didn't do what

[2] The mail cover was to exclude attorney-client communications.

they're saying. You couldn't have! I told them you hadn't been home for that last week other than to grab your tattoo equipment, but, they accused me of lying to protect you" (Exhibit 4, p. 45); (2) a January 30, 2012 letter from co-defendant Pincus to "Alex," stating "Didn't sign cause the DA wants me to finish my tiempo in prison & sign some bullshit paper admitting to concealing a crime covering his ass" (Exhibit 6, p. 34); (3) a "Thursday" letter from co-defendant Pincus to an unknown individual, stating, "Ok so the D.A. is still trying to get me to sign some factual basis paper in preparation of my upcoming subpoena ... for his trial. Didn't sign it cause it's bullshit & now I go back 16 March [2012]" (Exhibit 6, p. 12); (4) a March 23, 2012 letter from co-defendant Pincus to "Teresa," stating, "[f]or criminal court, I have a preliminary hearing [on] 29 March [2012] .... It's gone this far because the D.A. wanted me to sign a factual basis specifically pointing the finger at [defendant Iacullo]. I can't do that because I was not physically present when it happened" (Exhibit 6, p. 13); and (5) an April 23, 2012 letter from co-defendant Pincus to "Andrew," stating, "[t]he DA will give me 2 with ½ if I sign some factual basis statement, but that statement isn't right. I wasn't there so I can't say that I "know" what happened. You know my 2 yrs. would be up on 1 June though & I would hate to have to stay longer." (Exhibit 6, p. 19).

On July 10, 2012, co-defendant Pincus signed an advisement and waiver of rights for a felony guilty plea as to both charges against her. (Exhibit 6.) A Factual Basis for her guilty plea was enumerated. (Exhibit 6, p. 6.) In the Factual Basis, co-defendant Pincus attested, in part, as follows:

> On and between June 1, 2011 and June 8, 2011, in Orange County, I willfully and unlawfully harbored, concealed, and aided [defendant Iacullo], my boyfriend at the time, knowing he had committed the crimes of child abuse and torture upon my son, Isaiah, with the intent that [defendant Iacullo] might avoid and escape from arrest, trial, conviction, and punishment for the felony crimes he committed against my son, Isaiah. I knew that he committed the crimes against my son because I saw the injuries on my son. I did not personally inflict the injuries on my son. My son, Isaiah, told me that

> [defendant Iacullo] hit him and burned him numerous times and [defendant Iacullo] admitted to me that he went too far with Isaiah after I confronted him about Isaiah's injuries. After knowing this, I kept Isaiah out of school so that no one would see the injuries on Isaiah with the intent that [defendant Iacullo] might avoid and escape arrest, trial, conviction, and punishment for the abuse and torture he committed against Isaiah, my son.[3]
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> (Exhibit 6, p. 6.)

Co-defendant Pincus signed the Factual Basis under penalty of perjury.

A cooperation agreement between Respondent and co-defendant Pincus was also attached to the advisement and waiver of rights for a felony guilty plea. (Exhibit 6, pp. 8-11.) The cooperation agreement set forth the consideration agreed to by Respondent and co-defendant Pincus. The cooperation agreement called for co-defendant Pincus to cooperate with the Orange County District Attorney's Office by agreeing to testify in defendant Iacullo's trial. The cooperation agreement stated that co-defendant Pincus would tell the truth, but it also included the following admonishment:

> It is further understood that [co-defendant Pincus] shall be subjected to prosecution for perjury for any intentional deviation from the truth. Any intentional false statements by her during the investigation or her testimony may subject her to criminal charges if it appears that she has falsely implicated an innocent person in the commission of a crime or violated any other statute in making such statements or providing such evidence.
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> (Exhibit 6, pp. 10.)

Co-defendant Pincus was sentenced to two years in state prison with credit for 399 days actual custody and 399 days of good time/work time for a total of 798 days. Accordingly, co-defendant Pincus was immediately released from custody.

After signing the cooperation agreement with co-defendant Pincus, Respondent testified that she did not view co-defendant Pincus as a prosecution witness under Penal Code section

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[3] Respondent solicited this statement even though it was in direct contradiction to several of co-defendant Pincus's mail cover letters in Respondent's possession.

1054.1(f). Instead, Respondent believed that co-defendant Pincus would be called as a defense witness after she entered her plea. Respondent's purported belief, however, is not credible considering she required co-defendant Pincus to enter into the cooperation agreement and to sign a Factual Basis stating that co-defendant Pincus "knew" defendant Iacullo abused and tortured her son.

Sometime during April 2013, Respondent was transferred from the Family Protection Unit as part of her office's periodic rotation. The prosecution of the *Iacullo* case was assigned to Deputy District Attorney Jennifer Duke (Deputy DA Duke). Deputy DA Duke, who has been employed with the Orange County District Attorney's Office for 20 years, had never used a mail cover before. Deputy DA Duke asked Respondent if the mail cover materials had been produced in discovery. Respondent replied, "Why would I?"

Not turning over the mail cover materials seemed odd to Deputy DA Duke, and she wondered if there was case law regarding mail covers that she was not aware of. She therefore spoke with Ted Burnett (Burnett) about this issue. Burnett was Deputy DA Duke's supervisor and the head of the Family Protection Unit in the Orange County District Attorney's Office. Burnett confirmed Deputy DA Duke's suspicion that the mail cover materials should have been produced to Joe Dane (Dane), defendant Iacullo's criminal defense attorney.

Between April 2012 and June 2013, the case against defendant Iacullo was scheduled for trial on approximately five occasions. Each time, the defense brought a motion to continue the jury trial in close proximity to the scheduled trial date. Each of these motions to continue was granted by the Superior Court on or about the trial date.

Between July 2011 and August 2012, Dane had repeatedly requested discovery from Respondent, as follows. On July 21, 2011, Dane faxed a letter to Respondent seeking various items of discovery and specifically requesting:

> Any materials exculpatory or helpful to the defense within the broad meaning derived from *Brady v. Maryland* (1963) 373 U.S. 83 and the provisions of California Penal Code § 1054.1. [¶] Please notify my office as soon as possible so that I can review these materials prior to our next court date if at all possible.
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> (Exhibit 4, p. 19.)

Respondent received Dane's July 21, 2011 fax. (Exhibit 4, p. 20.)

On April 18, 2012, Dane caused another letter to be faxed to Respondent which sought discovery and again specifically requested:

> Any materials exculpatory or helpful to the defense within the broad meaning derived from *Brady v. Maryland* (1963) 373 U.S. 83 and the provisions of California Penal Code § 1054.1. [¶] Please notify my office as soon as possible so that these materials can be reviewed prior to the next court date.
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> (Exhibit 4, p. 28.)

Respondent received Dane's April 18, 2012 fax. (Exhibit 4, p. 29.)

On August 24, 2012, Dane faxed a letter to Respondent stating:

> On our last court date of July 18, you told me that you would have additional discovery for me "next week." It has now been five weeks and to date, I have not yet received any supplemental discovery that you mentioned would be forthcoming following the plea of the codefendant in this matter. Based on [co-defendant Pincus's] sentencing being continued to [defendant Iacullo's] trial date and having her ordered back, I can only surmise that she has been offered a plea deal in exchange for her testimony. If that is the case, I am requesting that the prosecution provide, pursuant to our previous discovery requests and your ongoing obligations under the *Brady* decision, any and all items of discovery including but not limited to the following:
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> 1. Copies of any plea agreements, plea forms, factual basis or other documentation related to the plea deal of [co-defendant Pincus];
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> 2. Any materials exculpatory or helpful to the defense within the broad meaning derived from *Brady v. Maryland* (1963) 373 U.S. 83 and the provisions of California Penal Code § 1054.1. This would include, but is not limited to any information noted or documented by law enforcement indicating instances of

dishonesty, untruthfulness, lack of candor or intentional withholding of information by [co-defendant Pincus][;]

3. Copies of any and all proffer statements, transcripts, recordings, videotapes or other "statements" (within the broad meaning of the word in the discovery context), notes of any investigators or other prosecution team members regarding the above; [¶]...[¶]

Please notify my office as soon as possible so that I can review these materials prior to our next trial date if at all possible.

(Exhibit 4, pp. 31-32.)

Respondent received Dane's August 24, 2012 fax.

On or about September 5, 2012, Dane caused another letter to be faxed to Respondent which sought discovery. In this letter Dane wrote:

I have informally requested discovery that you have been promising for quite some time now. I sent a letter to you on August 24, 2012 and have yet to receive a response. Am I to assume that your lack of response should be taken as a denial of my discovery request?

Please respond so that I will know that you are working on my request or that you are declining to provide the requested items of discovery, some of which may be exculpatory to my client.

(Exhibit 4, p. 36.)

Respondent received Dane's September 5, 2012 fax. (Exhibit 4, p. 38.)

On or about June 6, 2013, Deputy DA Duke produced, to Dane, the 1,000 plus pages of mail cover materials accumulated since the mail cover was first put in place. Deputy DA Duke also canceled the mail cover. The next jury trial date set after Deputy DA Duke's assignment to the *Iacullo* matter was June 17, 2013.

On July 3, 2013, Dane filed a Motion re: Points and Authorities in Support of a Motion to Dismiss or in the Alternative to Recuse the Orange County District Attorney's Office. A hearing was held before the Honorable Judge Goethals on July 17 and 29, 2013, on the issues raised in defendant Iacullo's defense counsel's motion.

Respondent testified at the hearing. She acknowledged that she was familiar with her *Brady*[4] obligations, as well as Penal Code section 1054 and its requirements. She testified that she was aware of Dane's discovery requests and her obligation to produce exculpatory and mitigating information, even without a request. (Exhibit 5, pp. 73-74.) Respondent further testified that she thought the only possible exculpatory mail cover letters were those from co-defendant Pincus to defendant Iacullo stating that she did not think defendant Iacullo could have performed the acts with which he was charged because he was not at home at the time the child was abused.

During the hearing, when asked why she did not turn over the mail cover materials, Respondent replied "it relates to trial strategy."[5] (Exhibit 5, p. 73.) She also explained that she "knew that [defendant Iacullo] was in possession of the letters that had the exculpatory information so [she] didn't at the time feel that it would be a surprise to the defense as to what [co-defendant Pincus's] letters contained because the defense already had the letters. And [Respondent] had proof of that because [she] had the mail covers showing [her] that [defendant Iacullo] had received those letters." (Exhibit 5, p. 76.)

Judge Goethals ordered Respondent's recusal from the *Iacullo* case. Judge Goethals found that "there was a willful *Brady* violation in this case by [Respondent]. . . . And the excuse that she gave for not giving up this obviously exculpatory material was not a reasonable excuse. It wasn't even close to a reasonable excuse." (Exhibit 5, p. 185.) Judge Goethals went on to state:

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[4] All references to "*Brady*" refer to the United States Supreme Court holding in *Brady v. Maryland* (1963) 373 U.S. 83.

[5] Respondent testified in the present proceeding that she used the term "trial strategy" because defendant Iacullo was present in court and she did not wish to say anything that would potentially endanger the victim. Respondent's credibility on this subject was diminished by the fact that she also did not mention her concerns for victim safety when Deputy DA Duke inquired whether the mail cover materials had been produced.

> I don't know if [Respondent] doesn't know what the law is. That's no excuse. Ignorance of the law for an experienced prosecutor for engaging in *Brady* misconduct is not a reasonable excuse either. That was a willful violation. [¶] Fortunately, for whatever reason, [Respondent] was removed from the case; [Deputy DA Duke] came on and immediately saw the situation and provided to [Dane] just about as soon as possible the material that [Respondent] for whatever reason for over a year and a half did not provide. It doesn't seem like it was a close call for [Deputy DA Duke], and it should not have been a call at all for [Respondent]."
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> (Exhibit 5, pp. 185-186.)

Judge Goethals did not find that defendant Iacullo's due process rights had been violated to the degree that he could not receive a fair trial. Judge Goethals denied the motion to dismiss, but did so without prejudice—noting that the defense could renew the motion to dismiss at trial. Judge Goethals also ordered that the defense could call Respondent as a witness at trial.

Neither side appealed Judge Goethal's ruling. In January 2014, defendant Iacullo and the Orange County District Attorney's Office negotiated a plea involving 12 years in state prison. On January 6, 2014, defendant Iacullo signed an advisement and waiver of rights for a felony guilty plea. The advisement and waiver of rights included a Factual Basis for defendant Iacullo's guilty plea to Penal Code section 273(a) (Child Abuse) and an admission to Penal Code section 12022.7(a) (Enhancement for Great Bodily Injury), as well as an admission to all prior convictions. Defendant Iacullo was sentenced to 12 years in state prison on January 24, 2014.

Conclusions

Count One – Section 6068, subd. (a) [Attorney's Duty to Support Laws]

Section 6068, subdivision (a), provides that an attorney has a duty to support the Constitution and laws of the United States and California. In Count One, the State Bar charges that Respondent violated section 6068, subdivision (a), by violating Penal Code section 1054.1 et seq.

Penal Code section 1054.1 lays out the duties of prosecutors to disclose materials to defendants. This section provides, in part, that a prosecuting attorney must disclose to the defendant all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecutor knows it to be in the possession of its investigating agencies:

> [¶]...[¶]
> (c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged;
> [¶]...[¶]
> (e) Any exculpatory evidence; and
> (f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial ....

The timeframe for disclosure is listed in Penal Code section 1054.7. That statute states:

> The disclosures required under this chapter shall be made at least 30 days prior to the trial, unless good cause is shown why a disclosure should be denied, restricted, or deferred. If the material and information becomes known to, or comes into the possession of, a party within 30 days of trial, disclosure shall be made immediately, unless good cause is shown why a disclosure should be denied, restricted, or deferred. "Good cause" is limited to threats or possible danger to the safety of a victim or witness, possible loss or destruction of evidence, or possible compromise of other investigations by law enforcement.
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> Upon the request of any party, the court may permit a showing of good cause for the denial or regulation of disclosures, or any portion of that showing, to be made in camera. A verbatim record shall be made of any such proceeding. If the court enters an order granting relief following a showing in camera, the entire record of the showing shall be sealed and preserved in the records of the court, and shall be made available to an appellate court in the event of an appeal or writ. In its discretion, the trial court may after trial and conviction, unseal any previously sealed matter.

One of the purposes of these discovery statutes is to promote the ascertainment of truth in trials by requiring timely pretrial discovery. (Pen. Code, section 1054.) Prosecutors have a constitutional mandate to disclose exculpatory material evidence to defendants in criminal cases. (*Brady v. Maryland, supra*, 373 U.S. at p. 87.) "[T]he suppression by the prosecution of

evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecutor." (*Ibid.*)

Subsequent cases interpreting *Brady* require prosecutors to disclose, prior to trial, impeaching evidence and evidence favorable to the defense. "In order that a defendant may secure a fair trial as required by the due process clause, 'the prosecution has a duty to disclose all substantial material evidence favorable to an accused. [Citations.] That duty exists regardless of whether there has been a request for such evidence [citation], and irrespective of whether the suppression was intentional or inadvertent.' " (*Izazaga v. Superior Court* (1991) 54 Cal.3d 356, 378.) The obligation of disclosure includes both potentially exculpatory evidence and impeachment evidence regarding prosecution witnesses. (*United States v. Bagley* (1985) 473 U.S. 667, 676; *People v. Salazar* (2005) 35 Cal.4th 1031, 1048.)

In her defense, Respondent asserts that she only believed one letter to be exculpatory, the October 23, 2011 letter from co-defendant Pincus to defendant Iacullo. Relying on *People v. Salazar, supra*, 35 Cal.4th 1031, Respondent concluded that she did not have to turn over that letter because it was mailed to defendant Iacullo so he, presumably, had it in his possession.

In *Salazar*, the California Supreme Court considered the issue of whether the prosecution's alleged suppression of impeaching evidence relating to a medical examiner who testified against the defendant constituted a *Brady* violation. While considering the validity of the *Brady* claim, the Court noted that suppression of evidence by the government is one of the components of a "true *Brady* violation." (*Id.* at p. 1043.) On this issue, the Court wrote:

> If the material evidence is in a defendant's possession or is available to a defendant through the exercise of due diligence, then, at least as far as evidence is concerned, the defendant has all that is necessary to ensure a fair trial, even if the prosecution is not the source of the evidence. [Citations.] Accordingly, evidence is not suppressed unless the defendant was actually

> unaware of it and could not have discovered it " 'by the exercise of reasonable diligence.' " [Citations.]
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> (*Id.* at p. 1049.)

This court, however, agrees with the State Bar's argument that although Respondent's failure to disclose the exculpatory October 23, 2011 letter may not have warranted a new trial under *Salazar*, it does not mean that Respondent's conduct was proper. (See *United States v. Sudikoff* (C.D. Cal. 1999) 36 F.Supp.2d 1196.) The issue in Count One is whether Respondent complied with Penal Code section 1054.1. As noted above, Penal Code section 1054.1 does not contain any exceptions to its requirement that prosecutors turn over "any exculpatory evidence." Consequently, a prosecutor's belief that a defendant already has the exculpatory evidence in his or her possession is not a proper basis for declining to comply with Penal Code section 1054.1.

Moreover, this court does not agree that the October 23, 2011 letter was the only letter that needed to be disclosed. As noted above, Penal Code section 1054.1(f) requires disclosure of all relevant written or recorded statements of witnesses the prosecutor intends to call at trial. On July 10, 2012, Respondent entered into the cooperation agreement with co-defendant Pincus. As part of the cooperation agreement, co-defendant Pincus agreed to submit to interviews and testify in any and all proceedings relating to the abuse/torture of her child. Despite the cooperation agreement, Respondent did not disclose co-defendant Pincus's written statements pertaining to the charges against defendant Iacullo. This is of particular concern inasmuch as the Factual Basis co-defendant Pincus signed directly contradicted many of her statements contained in the mail cover materials.

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By willfully failing to disclose discoverable evidence to defendant Iacullo at least 30 days prior to trial, Respondent violated Penal Code sections 1054.1 and 1054.7,[6] and thereby willfully violated section 6068, subdivision (a).

Count Two – Section 6106 [Moral Turpitude – Suppression of Evidence]

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment. In broad terms, any act contrary to honesty and good morals involves moral turpitude. (*Kitsis v. State Bar* (1979) 23 Cal.3d 857, 865.) Evil intent is not necessary to prove moral turpitude, although some level of guilty knowledge or gross negligence is required. (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 241.)

The State Bar alleged that Respondent violated section 6106 by failing to produce to opposing counsel discoverable evidence in Respondent's possession pursuant to her obligations under Penal Code section 1054.1 et seq., in the *Iacullo* case when Respondent knew or was grossly negligent in not knowing that the production of this evidence was required. By setting up the mail cover, Respondent assumed the role of gatekeeper—determining whether each and every document obtained through the mail cover needed to be disclosed. Motivated by her desire to not reveal the mail cover, Respondent adopted an unreasonably narrow view of what did and did not need to be disclosed. As a result, Respondent failed to disclose exculpatory and impeachment evidence contained in multiple written statements made by a percipient witness in the prosecution's case. Although Respondent convinced herself that the evidence obtained in the

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[6] This court does not agree with Respondent's argument that Penal Code section 1054.7 should only apply to trial dates when the parties are actually going to go to trial. (See *In the Matter of Field* (Review Dept. 2010) 5 Cal. State Bar Ct. Rptr. 171, 182 [rejected argument that Penal Code section 1054.7 did not apply because court date was not "real"].) Moreover, Penal Code section 1054.7 contains provisions for requesting that the disclosure of materials be denied or restricted following an in camera showing of good cause. Respondent elected not to pursue such a request.

mail cover did not need to be disclosed, this belief was unreasonable and not honestly held, as it was in direct conflict with her known obligations under Penal Code section 1054.1 et seq.

By willfully failing to produce to opposing counsel discoverable evidence secured via a mail cover while grossly negligent in not knowing that the production of this evidence was required, Respondent committed an act involving moral turpitude, in willful violation of section 6106. However, since this count is based on the same conduct as Count One, the court does not assign it additional weight in culpability.

Count Three – Rule 5-220 [Suppression of Evidence]

Rule 5-220 provides that an attorney must not suppress any evidence that the attorney or the attorney's client has a legal obligation to reveal or to produce. Respondent willfully violated rule 5-220 by failing to produce to opposing counsel discoverable evidence secured via a mail cover in Respondent's possession pursuant to her obligations under Penal Code section 1054.1 et seq., in the *Iacullo* case. Again, however, since Count Three is based on the same conduct as Count One, the court does not assign it additional weight in culpability.

Aggravation[7]

The State Bar bears the burden of proving aggravating circumstances by clear and convincing evidence. (Std. 1.5.) The court finds the following with respect to aggravating circumstances.

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[7] All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Harm to Client/Public/Administration of Justice (Std. 1.5(j).)

Respondent's failure to turn over exculpatory and impeachment evidence, as required by law, significantly undermines the public's trust in the criminal justice system and warrants substantial consideration in aggravation.[8]

Lack of Insight (Std. 1.5(k).)

Respondent demonstrated a lack of insight regarding the present misconduct. She testified that she not only did nothing wrong, but did everything that a prosecutor should do. Respondent also testified that she would engage in the *same* conduct if given another chance. Her lack of insight and unwillingness to acknowledge her own misconduct is reason to believe that she may again commit similar misconduct. Accordingly, Respondent's lack of insight warrants significant consideration in aggravation. (See *In the Matter of Layton* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 366, 380.)

Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Std. 1.6.) The court finds the following with regard to mitigating circumstances.

No Prior Record (Std. 1.6)(a).)

Respondent was admitted to the practice of law in December 1998 and has no prior record of discipline. Her approximately 13 years of discipline-free conduct prior to the present

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[8] While one cannot say what the outcome would have been at trial, defendant Iacullo was facing the possibility of life in prison and the ramifications of Respondent's misconduct factored into the Orange County District Attorney's Office's decision to enter into a plea agreement rather than proceed to trial. Since the outcome at trial is uncertain, especially in light of the exculpatory statements revealed in the mail cover, the court does not agree with the State Bar's argument in aggravation that defendant Iacullo received a significantly reduced sentence due to Respondent's misconduct.

misconduct warrants significant consideration in mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [more than ten years of discipline-free practice entitled to significant weight].)

Candor/Cooperation to Victims/State Bar (Std. 1.6(e).)

Respondent is entitled to minimal mitigation for cooperating with the State Bar by entering into a stipulation of facts. Most of the facts to which she stipulated were easily provable. (*In the Matter of Johnson* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179, 190 [where appropriate, more extensive weight in mitigation is accorded to those who admit to culpability as well as facts].)

Good Character (Std. 1.6(f).)

Respondent presented character testimony from 6 witnesses and character declarations from another 28 witness. Respondent's character witnesses were predominately criminal defense attorneys and prosecutors, but also included a law school professor and an Orange County Superior Court judge. Respondent's character witnesses demonstrated a general understanding of the alleged misconduct and attested to her honesty, good character, and hard work. Many of Respondent's character witnesses described her as a prosecutor that strives for justice and not to win at all costs. Several witnesses gave specific examples of Respondent being extremely conscientious and willing to listen to the merits of the defendant's case.

All of Respondent's character witnesses were affiliated with the legal community, so the weight afforded Respondent's character evidence is diminished by the fact that her character witnesses do not represent a wide range of references from the general and legal communities. (*In the Matter of Kreitenberg* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 469, 476-477 [character evidence entitled to limited weight where it was not from wide range of references].) Nonetheless, Respondent's extraordinary array of good character witnesses warrants significant weight in mitigation. (*In the Matter of Riordan* (Review Dept. 2007) 5 Cal. State Bar Ct. Rptr.

41, 50 [testimony of attorneys and judges entitled to great consideration based on their strong interest in maintaining the honest administration of justice].)

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025.)

In determining the level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628). Second, the court looks to decisional law. (*Snyder v. State Bar* (1990) 49 Cal.3d 1302, 1310-1311; *In the Matter of Taylor* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 563, 580.)

Standard 1.7 provides that if aggravating or mitigating circumstances are found, they should be considered alone and in balance with any other aggravating or mitigating factors. And, if two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed will be the most severe of the applicable sanctions. (Std. 1.7(a).)

In this case, the standards call for the imposition of a minimum sanction ranging from actual suspension to disbarment. (Standard 2.12(a).) While the court did not assign additional weight in culpability in Count Two, it should be noted that standard 2.11 calls for the same range of discipline (disbarment or actual suspension) for an act of moral turpitude.

The standards, however, "do not mandate a specific discipline." (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Ct. Rptr. 980, 994.) It has long been held that the court is "not bound to follow the standards in a talismanic fashion. As the final and independent

arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender." (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

Prosecutors are held to an elevated standard of conduct because of their "unique function ... in representing the interests, and in exercising the sovereign power, of the state." (*People v. Hill* (1998) 17 Cal.4th 800, 820.) "The duty of the district attorney is not merely that of an advocate. His duty is not to obtain convictions, but to fully and fairly present to the court the evidence material to the charge upon which the defendant stands trial .... In the light of the great resources at the command of the district attorney and our commitment that justice be done to the individual, restraints are placed on him to assure that the power committed to his care is used to further the administration of justice in our courts and not to subvert our procedures in criminal trials designed to ascertain the truth." (*In re Ferguson* (1971) 5 Cal.3d 525, 531.)

The State Bar urges that Respondent, among other things, be actually suspended for a period of six months. Respondent, on the other hand, asserts that a dismissal is appropriate, but, upon a finding of culpability, recommends a stayed suspension. The court looked to the case law and found guidance in *In the Matter of Murray* (Review Dept. 2016) 5 Cal. State Bar Ct. Rptr. 479; and *In the Matter of Field*, *supra*, 5 Cal. State Bar Ct. Rptr. 171.

In *Murray*, the prosecutor in a child molestation case committed moral turpitude by deliberately adding two lines of fabricated testimony to the defendant's transcribed statement making it appear that the defendant had confessed. The criminal defense attorney then confronted the defendant with the false confession, causing the defendant to no longer trust his own attorney. The prosecutor claimed it was just a joke, but the criminal court found his conduct outrageous and in violation of the defendant's rights to counsel and to a fair trial. As a result, the

criminal charges against the defendant were dismissed. In aggravation, the prosecutor's misconduct resulted in significant harm to the defendant, the administration of justice, and the alleged 10-year-old victim who was deprived her day in court. In mitigation, the prosecutor had no prior record of discipline over approximately 10 years of practice, was candid and cooperative throughout the proceedings, presented extraordinary good character evidence, had been active in community service, and had demonstrated remorse. The review department noted that the prosecutor "lost sight of the significant and vital duties placed upon him as a prosecuting attorney" and recommended, among other things, that he be actually suspended for one year. (*In the Matter of Murray*, *supra*, 5 Cal. State Bar Ct. Rptr. 479, 491-492.)

In *Field*, an overzealous prosecutor was found culpable of professional misconduct in four separate criminal prosecutions over a ten-year period. The prosecutor's misconduct included: (1) obtaining a minor's dental examination in violation of a court order, resulting in suppression of the examination evidence; (2) intentionally withholding a witness statement that was favorable to the defense, resulting in a discovery violation for concealing evidence; (3) intentionally withholding a defendant's statement favorable to co-defendants in a murder case, resulting in the dismissal of a 25-year gun enhancement;[9] and (4) making a deceptive closing argument, resulting in an appellate court reversal. In aggravation, the prosecutor committed multiple acts of misconduct and harmed the administration of justice.[10] In mitigation, he cooperated with the State Bar by entering into a stipulation, presented an extraordinary demonstration of good character, and provided an extensive record of pro bono and community

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[9] By intentionally withholding a defendant's statement favorable to co-defendants, the prosecutor was found to have committed moral turpitude by suppressing evidence and violated Penal Code sections 1054.1 and 1054.7.

[10] During his disciplinary trial, the prosecutor contested his culpability, but admitted to exercising poor judgment and viewing his discovery duties too narrowly. Accordingly, it was found that he did not display indifference toward rectification or lack of insight.

service activities. The review department recommended, among other things, that the prosecutor be actually suspended for a minimum of four years.

While the misconduct in *Murray* was more outrageous and the misconduct in *Field* was more extensive than the present case, a prosecutor's failure to timely turn over exculpatory and impeachment evidence is extremely serious misconduct. Even when facing difficult situations, such as the protection of witnesses, prosecutors must operate within the confines of the law. Similar to the prosecutor in *Murray*, Respondent seems to have lost sight of her prosecutorial duties. " 'The first, best, and most effective shield against injustice for an individual accused ... must be found ... in the integrity of the prosecutor.' [Citation.]" (*In the Matter of Field, supra*, 5 Cal. State Bar Ct. Rptr. 171, 186-187.)

One issue that distinguishes the present case from *Murray* and *Field* is Respondent's lack of insight and understanding regarding her own misconduct. This court found deeply disturbing Respondent's testimony that she would engage in the same conduct again. In her capacity as a prosecutor, Respondent's lack of insight on this subject represents a tremendous threat of future harm to the public and the administration of justice.

Therefore, after thorough consideration, the court recommends, among other things, that Respondent be suspended from the practice of law for two years, that execution of that period of suspension be stayed, and that she be placed on probation for three years, including a minimum period of actual suspension of one year and until Respondent provides proof to the State Bar Court of her rehabilitation, fitness to practice, and present learning and ability in the general law.

Recommendations

It is recommended that respondent Sandra Lee Nassar, State Bar Number 199305, be suspended from the practice of law in California for two years, that execution of that period of

suspension be stayed, and that Respondent be placed on probation[11] for a period of three years subject to the following conditions:

1. Respondent is suspended from the practice of law for a minimum of the first year of probation, and will remain suspended until she provides proof to the State Bar Court of her rehabilitation, fitness to practice, and present learning and ability in the general law. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(c)(1).)

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation.

3. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including Respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, Respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.

4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of the conditions of Respondent's probation during the preceding calendar quarter. In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, Respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with Respondent's probation conditions.

6. Within one year after the effective date of the discipline herein, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

7. Within 30 days after the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the

[11] The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

Office of Probation, Respondent must meet with the probation deputy either in person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

At the expiration of the probation period, if Respondent has complied with all conditions of probation, Respondent will be relieved of the stayed suspension.

Multistate Professional Responsibility Examination

It is recommended that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of Respondent's suspension, whichever is longer and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

California Rules of Court, Rule 9.20

It is further recommended that Respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: October 10, 2017

YVETTE D. ROLAND
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 10, 2017, I deposited a true copy of the following document(s):

DECISION

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

BLITHE C. LEECE
CARR WOODALL
10808 S RIVER FRONT PKWY
STE 175
SOUTH JORDAN, UT 84095 - 5961

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

HUGH RADIGAN, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 10, 2017.

Johnnie Lee Smith
Case Administrator
State Bar Court